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**Honeyville Grain, Inc. and Teamsters Chauffeurs, Warehousemen, Industrial & Allied Workers of America, Local 166, International Brotherhood of Teamsters, AFL-CIO.** Case 31-CA-26806

July 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on May 5, 2004, the General Counsel issued the complaint and amendment to complaint on May 14 and 21, 2004, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 31-RC-8075. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On June 4, 2004, the General Counsel filed a Motion for Summary Judgment. On June 9, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification based on its objections to the election in the representation proceeding.<sup>1</sup>

<sup>1</sup> Although the Respondent's answer denies the complaint allegation that it has refused to bargain with the Union, we find that this denial does not raise any issues warranting a hearing. The Respondent's response to the Notice to Show Cause admits that it "did refuse to negotiate with the Union, on the grounds that it had no obligation to do so . . ." Thus, it is clear that the Respondent is refusing to bargain in order to contest the Union's certification.

In addition, in its response to the Notice to Show Cause and opposition to the Motion for Summary Judgment, the Respondent contends that the General Counsel's failure to attach a copy of the "Employer's Exceptions to the Hearing Officer's Report and Recommendations" and the "Employer's Brief in Support of Exceptions" is sufficient reason to deny the Motion for Summary Judgment because the motion is not supported by the record and the General Counsel has violated the re-

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>2</sup>

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Rancho Cucamonga, California (Respondent's facility), has been engaged in the business of manufacturing, distributing, and warehousing food grade products.

During the 12-month period ending May 5, 2004, the Respondent, in conducting its business operations described above, purchased and received at its Rancho Cucamonga, California facility goods valued in excess of \$50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held April 12, 2002, the Union was certified on February 6, 2004, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: Full-time and regular part-time drivers employed by Honeyville Grain, Inc. at or out of 11600 Dayton Drive, Rancho Cucamonga, California.

quirements for filing such a motion. This assertion is without merit. The documents referred to were previously submitted to the Board and are part of the record in the representation proceeding below. As noted above, the Board has taken official notice of the record in that proceeding, and the failure of the General Counsel to attach these documents to its motion does not deprive the Board of a full record in this unfair labor practice proceeding.

<sup>2</sup> The Respondent's request that the complaint be dismissed is therefore denied.

Excluded: Quality assurance employees, warehouse employees, production employees, maintenance employees, mix room employees, office clerical employees, professional employees, all other employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

#### *B. Refusal to Bargain*

On about February 20, 2004, the Union, by letter, requested the Respondent to bargain and, since about that same date, the Respondent has refused to do so. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing on and after February 20, 2004, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Honeyville Grain, Inc., Rancho Cucamonga, California, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with Teamsters Chauffeurs, Warehousemen, Industrial & Allied Workers of America, Local 166, International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: Full-time and regular part-time drivers employed by Honeyville Grain, Inc. at or out of 11600 Dayton Drive, Rancho Cucamonga, California.

Excluded: Quality assurance employees, warehouse employees, production employees, maintenance employees, mix room employees, office clerical employees, professional employees, all other employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Rancho Cucamonga, California, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 20, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 30, 2004

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Robert J. Battista,

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Chairman

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Teamsters Chauffeurs, Warehousemen, Industrial & Allied Workers of America, Local 166, International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

Included: Full-time and regular part-time drivers employed by us at or out of 11600 Dayton Drive, Rancho Cucamonga, California.

Excluded: Quality assurance employees, warehouse employees, production employees, maintenance employees, mix room employees, office clerical employees, professional employees, all other employees, guards and supervisors as defined in the Act.

HONEYVILLE GRAIN, INC.